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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,513	07/20/2001	Michelle Marie Svatos	2001P13112US	9679

7590

04/03/2003

Siemens Corporation
Attn: Elsa Keller, Legal Administrator
Intellectual Property Department
186 Wood Avenue South
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EXAMINER

CHURCH, CRAIG E

ART UNIT

PAPER NUMBER

2882

DATE MAILED: 04/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 1/28/03.
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-23 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-23 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s).
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-9, 11-15, 18, 19 and 21-23 are rejected under 35 U.S.C. § 103 as being unpatentable over Siochi (6167114) in view of Leavitt et al (5160847). Siochi teaches therapy apparatus comprising an electron gun, waveguide electron accelerator 14, bending magnet 15, movable target 17 for emitting x-ray photons, collimator 19 and accessory holder 21. See lines 1-31 of column 5.

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Leavitt teaches a multileaf electron collimator configured to be inserted or removed from the standard therapy machine accessory holder 4 (lines 28-65 of column 3) and includes vanes 40/41 and electronics circuit boards 61, 70 and 71, and It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the Leavitt collimator in the Siochi accessory holder since that was its disclosed purpose.

Claims 10, 16 and 17 are rejected under 35 U.S.C. § 103 as being unpatentable over Siochi in view of Leavitt as applied to claim 1 above, and further in view of Karlsson cited by applicant. Figure 1 of Karlsson illustrates the use of a helium container in the electron beam path of a therapy machine, and It would have been obvious to one of ordinary skill in the art at the time the invention was made to use same in the Siochi/Leavitt device to mitigate electron absorption.

Claim 20 is rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Leavitt.

Applicant's arguments filed January 28, 2003 have been fully considered but they are not deemed to be persuasive. Since the Siochi patent was published 7 months before applicant's filing date, the § 103 rejections have been made under 103/102a and not under 103/102e as argued by applicant. Further, applicant has submitted no evidence of common ownership, MPEP 706.02(1)(2).

In traversing the Siochi/Leavitt rejection applicant argues a rejection that has not been made. Nothing in this or the previous

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rejection suggests placing Siochi's collimator 19 outside the head as argued by applicant. Rather the rejection reads:

Siochi teaches therapy apparatus comprising an electron gun, waveguide electron accelerator 14, bending magnet 15, movable target 17 for emitting x-ray photons, collimator 19 and accessory holder 21. Leavitt teaches a multileaf electron collimator configured to be inserted or removed from the standard therapy machine accessory holder and includes vanes 40/41 and electronics circuit boards 61, 70 and 71, and it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the Leavitt collimator in the Siochi accessory holder since that was its disclosed purpose.

WHAT IS APPLICANT'S RESPONSE TO THE REJECTION THAT WAS ACTUALLY MADE?

With regard to claims 14, 19 and 21-23, when the Leavitt collimator is placed in the Siochi accessory holder as it is intended to be as detailed above; the resulting system comprises two collimators in series as claimed.

Regarding claim 20, the Leavitt collimator includes electronics boards 61, 70 and 71 which are removably mounted on an accessory holder when the collimator is installed as taught by Leavitt. The actual drive electronics are on board 61 (lines 31-37 of column 8) which is mounted in a plane perpendicular to the travel of vanes 40/41 as shown in figure 3 and which therefore is located outside the open end of accessory holder 4. Note that both figures 2 and 3 show the drive motors 55 (incorrectly numbered 53 in figure 3).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

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A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to Examiner Church at telephone number (703) 308-4861.

Craig E Church

CRAIG E. CHURCH
Senior Examiner
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